

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

Deborah Mitchell, :  
Plaintiff, :  
v. : Case No. 2:06-cv-0525  
Home Echo Club, Inc., et al., : JUDGE MARBLEY  
Defendants. :

ORDER

On November 7, 2007, plaintiff filed a motion pursuant to Fed.R.Civ.P. 55(a) requesting that the Court enter a default judgment against both defendants. At that time, the Court's docket reflected that only one of the defendants, Home Echo Club, Inc., had been properly served with the complaint and summons. The Court has since corrected its docket to reflect that both defendants were properly served. Neither has filed an answer within the time allowed in the Federal Rules of Civil Procedure.

Plaintiff may well be entitled to a default judgment in this case. However, she must first obtain an entry of default by the Clerk. Fed.R.Civ.P. 55(a). After that occurs, a motion for default judgment may be made under Rule 55(b). Consequently, the pending motion for default judgment is premature and will be denied for that reason. Once plaintiff obtains a default, she may renew her motion. The Court notes that the current motion requests compensatory damages, attorneys' fees, and punitive damages. If the last request will be renewed, plaintiff should advise the Court in the motion how she intends to present evidence concerning the appropriateness of an award of punitive damages and the proper amount, matters not addressed in the materials supporting the present motion and not usually

susceptible of proof by way of affidavit. Ordinarily, the Court must hold a hearing on the amount of such damages. See Carpenters Labor-Management Pension Fund v. Freeman-Carder LLC, 498 F.Supp.2d 237 (D.D.C. 2007).

Based on the foregoing, the motion for default judgment (#7) is **DENIED WITHOUT PREJUDICE**.

s/Algenon L. Marbley  
Algenon L. Marbley  
United States District Judge